

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4908 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SURAJBEN WD/O KANAJI BHAGAJI

Versus

STATE OF GUJARAT

Appearance:

MR SH SANJANWALA for Petitioner
MR K.C.SHAH, ASSISTANT GOVERNMENT PLEADER for
the respondents.

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 16/07/96

ORAL JUDGEMENT

The petitioner has challenged the action on the part of respondent no.2-Deputy Collector, Viramgam in refusing to grant land bearing survey number 141 of village Hebatpur, taluka Dascroi on permanent basis by charging not the market value but only the amount of six times assessment of revenue, by filing this petition.

The petitioner has inter alia contended that she is a widow belonging to Bakshi Panch and she and before her, her predecessors-in-title were cultivating the land in question for about 30 years and she is in possession of the same. It is the case of the petitioner that she is entitled to grant of land by charging only six times the assessment as per the Government policy and circulars. Originally, the land was bearing survey number 152 and it was given block, No.141. The petitioner was given the land in question as a grant on 6.4.1972. However, the grant came to be cancelled.

The petitioner has interalia contended that the land in question was given to the petitioner right from 1954-55 and the petitioner is in possession of the said land. It is the case of the petitioner that she is entitled to grant of this land by paying six times the assessment in view of the Government resolution dated 1.3.1960. However, the Collector by his letter dated 7/9/1990 rejected the application of the petitioner for grant of the said land on permanent basis by charging six times the assessment. The petitioner carried the matter in revision before respondent no.3- Secretary (Appeals), Revenue Department. The revision came to be dismissed on 3.8.1993. The petitioner again approached the Deputy Collector who again rejected the request of the petitioner to grant the said land by passing an order on 30.7.1994. Hence, this petition.

It could be seen from the order as at Annexure E dated 6.4.1972 that the land in question came to be granted to the petitioner on certain conditions. The request of the petitioner to grant land on payment of six times the assessment and not as per the market value, was not accepted. Learned advocate for the petitioner has contended that the petitioner is entitled to benefit of the Government resolution dated 15.2.1989 produced at Annexure A. It is contended that as per the said resolution, the petitioner is entitled to grant of land on payment of six times the assessment. The petitioner was offered the land in question as a grant on 6.4.1972. However, the said order of grant came to be cancelled in 1975 as the petitioner failed to pay the price as stated in the order.

The question whether the petitioner is entitled to grant of land in question on payment of six times the assessment and not the market price pursuant to the aforesaid Government resolution, is not seriously considered by the authorities below. There appears to be

non-application of mind to the vital issue,with the result, without going into further merits of the case, ends of justice will be satisfied if the matter is remanded to respondent No.2-Deputy Collector,Viramgam for reconsideration. As the matter is required to be remanded, it would not be expedient to make further observation at this juncture.Respondent No.2-Deputy Collector will have to decide afresh ,after considering the merits of the contentions and resolution of the Government dated 15.2.1989.If the case of the petitioner falls within the ambit of the said resolution or in other words, if the petitioner is found entitled to the benefits arising out of the said resolution, respondent No.2 will pass appropriate orders in accordance with law after giving an opportunity of hearing.

In the result, the impugned orders are quashed and set aside and the matter is remanded to respondent No.2-Deputy Collector for a fresh decision on merits considering the aforesaid Government resolution and other contentions that may be advanced during the course of hearing. The petition is partly allowed. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

corrected.\ --